

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MODERN EVENT FURNITURE,

Plaintiff,

v.

SACRAMENTO EVENT CO LLC, *et al.*,

Defendants.

Case No. 2:23-cv-02089-JDP

ORDER

GRANTING DEFENDANTS' MOTION TO
DISMISS

ECF No. 3

Plaintiff alleges that defendants infringed its trademarks and trade dresses by selling substantially similar products, both in design and name, without plaintiff's permission. Defendants move to dismiss plaintiff's complaint for lack of jurisdiction and failure to state a claim. ECF No. 3. For the reasons explained below, defendants' motion is granted.

Background

According to the complaint, plaintiff Modern Event Furniture ("MEF") is the leading wholesale manufacturer of furniture used in the special event and trade show industry. ECF No. 1-1 ¶ 16. Over the past twenty years, MEF has expended significant resources developing the design and functionality of its furniture, which are built to withstand the demands of the trade industry while offering sleek and polished design. *Id.* ¶¶ 16-17. Defendant Jennifer Corrigan has been an MEF customer since as early as 2014. *Id.* ¶ 18. In 2017, Corrigan informed MEF that she was relocating from Canada, where MEF is headquartered, to Sacramento to open defendant

1 Sacramento Event Co. LLC (“SEC”), an upscale event-furniture rental company. *Id.* ¶¶ 18-19.
 2 That same year, Corrigan toured MEF’s affiliate, Luxe Rentals, to learn about MEF’s products,
 3 designs, and how to operate a rental company. *Id.* ¶ 19.

4 SEC initially purchased multiple pieces of furniture from MEF. However, to increase its
 5 profitability, SEC began purchasing cheaper, lower-quality furniture from a foreign manufacturer.
 6 *Id.* ¶¶ 20-21. The furniture, which appeared substantially similar to that produced by MEF, was
 7 obtained by providing the manufacturer with photographs and design specifications for MEF’s
 8 products. *Id.* ¶ 21. In addition to misappropriating MEF’s design, SEC allegedly used the same
 9 names as did MEF for various pieces of furniture. *Id.* ¶ 23. And SEC allegedly took images of
 10 MEF’s products from its website and social media platforms and used those images to market
 11 counterfeit products. *Id.* ¶ 24.

12 The complaint alleges eight causes of action: (1) trade dress infringement under 15 U.S.C.
 13 § 1125(a); (2) common law trade dress infringement; (3) false designation of origin under 15
 14 U.S.C. § 1125(a); (4) unfair competition under California Business and Professions Code
 15 § 17200; (5) common law unfair competition; (6) false advertising under California Business and
 16 Professions Code § 17500; (7) trademark infringement under 15 U.S.C. § 1125; and (8) common
 17 law trademark infringement. *Id.* at 7-12.

18 Legal Standard

19 A party may move to dismiss a case for a lack of subject matter jurisdiction. Fed. R. Civ.
 20 P. 12(b)(1). A jurisdictional challenge made under Rule 12(b)(1) can be facial or factual. *Safe*
 21 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial challenge, the
 22 moving party asserts that the allegations in the complaint are “insufficient on their face” to
 23 establish federal jurisdiction. *Id.* “Whether subject matter jurisdiction exists therefore does not
 24 depend on resolution of a factual dispute, but rather on the allegations in [the] complaint.” *Wolfe*
 25 *v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). In evaluating such a claim, the court accepts the
 26 allegations as true, and the plaintiff need not present evidence outside the pleadings. *Id.*

27 In a factual challenge, the moving party “disputes the truth of the allegations that, by
 28 themselves, would otherwise invoke federal jurisdiction.” *Safe Air*, 373 F.3d at 1039. “When

1 challenged on allegations of jurisdictional facts, the parties must support their allegations by
 2 competent proof.” *Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010). The court does not simply
 3 accept the allegations in the complaint as true. *Safe Air*, 373 F.3d at 1039. Instead, it makes
 4 findings of fact, resolving any material factual disputes by independently evaluating the evidence.
 5 *Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 944-45 (9th Cir. 2021).

6 A complaint may be dismissed for “failure to state a claim upon which relief may be
 7 granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim, a
 8 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 9 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility when the plaintiff
 10 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 11 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,
 12 550 U.S. at 556). The plausibility standard is not akin to a “probability requirement,” but it
 13 requires more than a sheer possibility that a defendant has acted unlawfully. *Iqbal*, 556 U.S. at
 14 678.

15 For purposes of dismissal under Rule 12(b)(6), the court generally considers only
 16 allegations contained in the pleadings, exhibits attached to the complaint, and matters properly
 17 subject to judicial notice, and construes all well-pleaded material factual allegations in the light
 18 most favorable to the nonmoving party. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710
 19 F.3d 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). The court
 20 construes a pro se litigant’s complaint liberally, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972)
 21 (per curiam), and will only dismiss a pro se complaint “if it appears beyond doubt that the
 22 plaintiff can prove no set of facts in support of his claim which would entitle him to relief,” *Hayes*
 23 *v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017) (quoting *Nordstrom v. Ryan*, 762 F.3d
 24 903, 908 (9th Cir. 2014)).

25 Discussion

26 Defendants’ motion advances two arguments. First, defendants appear to argue that each
 27 of plaintiff’s claims is preempted by copyright law. ECF No. 3 at 5. According to defendants,
 28 MEF’s claims are merely reformulations of a copyright claim in that MEF alleges “violations of

MEF's copyright-protected images throughout" the complaint. *Id.* Defendants contend that because the complaint does not allege registration of a copyright or a refusal by the Copyright Office to register a claim, MEF fails to state a copyright infringement claim. *Id.*

Defendants' argument is based on a mischaracterization of the complaint. Contrary to defendants' contention, the complaint is not replete with allegations about defendants' use of MEF's photographs. Instead, the complaint contains a single factual allegation related to defendants' use of plaintiff's copyrighted images.¹ The remaining allegations concern defendants' misappropriation of MEF's design and product names to sell counterfeit furniture. Thus, there is no basis for defendants' conclusion that MEF is actually asserting copyright claims that have been disguised as unfair competition and trademark and trade dress claims.

Defendants' second argument, while imperfectly developed, fares better. Defendants argue that MEF's complaint contains only vague and general allegations that are insufficient to state a claim for relief. Defendants note that MEF does not identify any specific furniture design or portion thereof that is protectible. ECF No. 3 at 6.

Each of MEF's claims is based on defendants' alleged misuse of its protected trademark or trade dress. The Lanham Act "created a federal protection against two types of unfair competition, infringement of registered trademarks, 15 U.S.C. § 1114, and the related tort of false designation of the origin of goods, 15 U.S.C. § 1125(a)." *International Order of Job's Daughters v. Lindeburg & Co.*, 633 F.2d 912, 915 (9th Cir. 1980). A trademark is "a limited property right in a particular word, phrase, or symbol . . . that 'is used to identify a manufacturer or sponsor of a good or the provider of a service.'" *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 806 n.12 (9th Cir. 2003). Section 1125(a) of the Lanham Act protects unregistered trademarks. To prevail on trademark infringement claims, plaintiff must establish: "(1) that [he] has a protectible ownership interest in the mark; and (2) that the defendant's use of the mark is likely to cause consumer confusion." *See Network Automation, Inc. v. Advanced Sys. Concepts*, 638 F.3d 1137,

¹ Specifically, the complaint alleges that "Defendants, adding insult to injury, scraped the images of MEF's products from its website and social media platforms and used those exact images on SEC's website and social platforms to market its counterfeit product to its customers and potential customers, in violation of MEF's copyrights in the photos." ECF No. 1-1 ¶ 24.

1 1144 (9th Cir. 2011) (quoting *Dep't of Parks & Rec. v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118,
 2 1124 (9th Cir. 2006)). Registration of a mark with the U.S. Patent and Trademark Office
 3 provides a “strong presumption” that the mark is valid and protectable. *Zobmondo*
 4 *Entertainment, LLC v. Falls Media, LLC*, 602 F.3d 1108, 1113 (9th Cir. 2010); *see also Yellow*
 5 *Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 928 (9th Cir. 2005)
 6 (“[W]hen a mark is not registered, the presumption of validity does not apply.”). If the plaintiff’s
 7 trademark is not registered, the mark is protectible only if it “(1) is inherently distinctive or
 8 (2) has acquired distinctiveness through secondary meaning.” *Kendall-Jackson Winery, Ltd. v. E.*
 9 *& J. Gallo Winery*, 150 F.3d 1042, 1047 (9th Cir. 1998).

10 With respect to its trademark claims, MEF alleges that defendants “misappropriated the
 11 following marks in which MEF has common-law trademark rights: MONDRIAN,
 12 BERNHARDT, MAXWELL, MAYFAIR, ESSEX BAR BACK, AVENUE BAR,
 13 PARAMOUNT STOOL, MERCER SILHOUETTE, MERCER SIDE TABLE, CARLETON
 14 COFFEE TABLE, BENTLEY, CAPITAL RIVINGTON, and, REGENCY.” ECF No. 1-1 ¶ 23.
 15 MEF further alleges that defendants used these marks for each of the designs that it
 16 misappropriated. It does not, however, allege that any of these marks were registered. MEF was
 17 thus required to allege sufficient facts to plausibly show that it has a protectible ownership in the
 18 mark, which it has not done. *See Orgain, Inc. v. Northern Innovations Holding Corp.*, No. 8:18-
 19 cv-01253-JLS-ADS, 2018 WL 7504409, *3 (C.D. Cal. Dec. 6, 2016) (“Plaintiff has not pleaded
 20 federal registration and so must establish a plausible inference of validity by pleading other facts
 21 tending to show protectible distinctiveness.”).

22 MEF’s allegations related to infringement of its trade dresses are similarly deficient.
 23 “Trade dress refers generally to the total image, design, and appearance of a product and ‘may
 24 include features such as size, shape, color, color combinations, texture or graphics.’” *Clicks*
 25 *Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001) (quoting *Int’l Jensen, Inc.*
 26 *v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 822 (9th Cir. 1993)). To succeed on a trade dress
 27 infringement claim, a plaintiff must establish: “(1) that its claimed dress is nonfunctional; (2) that
 28 its claimed dress serves a source-identifying role either because it is inherently distinctive or has

1 acquired secondary meaning; and (3) that the defendant’s product or service creates a likelihood
 2 of consumer confusion.” *Id.* at 1258. The plaintiff is required to “specifically define the list of
 3 elements that comprise the trade dress.” *Treat, Inc. v. Dessert Beauty*, No. 05-923-PK, 2006 WL
 4 2812770, *14 (D. Or. May 5, 2006) (citing *Best Cellars, Inc. v. Wine Made Simple, Inc.*, 320 F.
 5 Supp. 2d 60, 69 (S.D.N.Y. 2003). “Only then can the court and the parties coherently define
 6 exactly what the trade dress consists of and determine whether the trade dress is valid and if what
 7 the accused is doing is an infringement.” *Id.*

8 MEF neither identifies the particular designs that were copied nor the specific pieces or
 9 types of furniture that defendants allegedly counterfeited. Instead, the complaint merely alleges
 10 that “MEF’s product designs are inherently distinctive or have acquired secondary meaning
 11 through MEF’s devotion of significant resources to the development of the products in its
 12 collection.” ECF No. 1-1 at 8. This conclusory statement is insufficient to put defendants and the
 13 court on notice of the specific trade dresses they allegedly infringed. *See, e.g., Arcsoft, Inc. v.*
 14 *Cyberlink Corp.*, 153 F. Supp. 3d 1057, 1069 (N.D. Cal. 2015) (observing that “courts in this
 15 circuit have required trade dress plaintiffs, at the very least, to provide adequate notice by
 16 including in their complaint ‘a complete recitation of the concrete elements of [their] alleged
 17 trade dress’”); *Autodesk, Inc. v. Dassault Systemes SolidWorks Corp.*, No. 08-cv-04397-WHA,
 18 2008 WL 6742224, at *5 (N.D. Cal. Dec. 18, 2008) (“[Plaintiff] must provide more detail and
 19 clarify . . . the trade dress at issue. The complaint does not sufficiently put [defendant] on notice
 20 of the trade dress claim alleged.”).

21 The complaint’s remaining claims for unfair competition and false advertisement are
 22 based on defendants’ alleged infringement of MEF’s trademark and trade dress rights. ECF No.
 23 1-1 at 9-11. As MEF has failed to state a trademark or trade dress infringement claim, the
 24 remaining claims must fail. *See, e.g., Cleary v. News Corp.*, 30 F.3d 1255, 1263 (9th Cir. 1994);
 25 *see 6th St. Partners, LLC v. Bd.*, No. CV 21-6595-RSWL-JPRX, 2022 WL 1570630, at *5 (C.D.
 26 Cal. Mar. 17, 2022) (“Claims for trademark infringement under California Business and
 27 Professions Code section 14245, common law trademark infringement, and unfair competition
 28 require the same showing as claims for trademark infringement under the Lanham Act.”); *Tan v.*

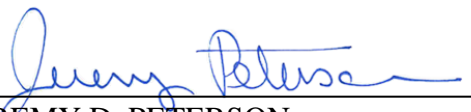
1 *GrubHub, Inc.*, 171 F. Supp. 3d 998, 1010-11 (N.D. Cal. 2016) (“Where the UCL claim is
2 premised on the same acts alleged in the complaint’s other causes of action, and those causes of
3 action fail, the UCL claim likewise must be dismissed because the plaintiff has not adequately
4 alleged any predicate unlawful acts.”); *Cleary v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir.
5 1994) (“This Circuit has consistently held that state common law claims of unfair competition
6 and actions pursuant to California Business and Professions Code § 17200 are ‘substantially
7 congruent’ to claims made under the Lanham Act.”).

8 Accordingly, it is hereby ORDERED that:

- 9 1. Defendants’ motion to dismiss, ECF No. 3, is granted.
10 2. Each of plaintiff’s claims is dismissed with leave to amend.
11 3. Within twenty-eight days of the date of this order, plaintiff may file an amended
12 complaint consistent with this order.

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14 IT IS SO ORDERED.

15 Dated: September 26, 2024

16 
17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE
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